SUPREME COURT NO. _____
COURT OF APPEALS NO. 75129-8-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE PERSONAL RESTRAINT OF

KEVIN LIGHT-ROTH,

Petitioner.

MOTION FOR DISCRETIONARY REVIEW

DANIEL T. SATTERBERG
King County Prosecuting Attorney

ANN SUMMERS
Senior Deputy Prosecuting Attorney
Attorneys for Petitioner

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 477-9497

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Table of Cases

Constitutional Provisions

Federal:

Washington State:

Statutes

Washington State:

Other Authorities

A. IDENTITY OF MOVING PARTY.

The State of Washington asks this Court to accept review of the Court of Appeals decision designated in Part B, which granted Kevin Light-Roth's personal restraint petition and remanded for resentencing.

B. COURT OF APPEALS DECISION.

In granting this personal restraint petition, the Court of Appeals held that State v. O'Dell, 183 Wn.2d 680, 358 P.3d 359 (2015), is a significant change in the law, and that therefore Light-Roth's untimely petition falls within an exception to the time-bar for collateral attacking a final conviction and sentence. The Court of Appeals also held that the trial court erred in imposing a standard range sentence although Light-Roth did not request an exceptional sentence, and the trial court elected to impose a sentence at the top of the standard range. A copy of the decision is in the Appendix at pages 1-17.

C. ISSUES PRESENTED FOR REVIEW.

1. Whether the Court of Appeals decision conflicts with In re Pers. Restraint of Greening, 141 Wn.2d 687, 697, 9 P.3d 206 (2000), in holding that State v. O'Dell is a significant change in the

law because this Court explicitly did not overturn a prior precedent in O'Dell.

2. Whether the Court of Appeals decision erred in granting relief where Light-Roth did not seek an exceptional sentence and where the court exercised its discretion to impose the highest possible sentence.

3. Whether this case presents an issue of substantial public interest that should be determined by the Washington Supreme Court where the Court of Appeals' holding means that "youthful" adult offenders (which remains undefined) who have previously been sentenced are entitled to resentencing although their sentences are final, constitutional and there was no error at sentencing.

D. STATEMENT OF THE CASE.

Kevin Light-Roth was convicted by a jury of murder in the second degree with a firearm enhancement and unlawful possession of a firearm in the first degree. His convictions were affirmed on appeal and mandate issued in 2008.

The facts of the murder are set forth in the unpublished Court of Appeals opinion affirming Light-Roth's conviction. Appendix at 21-29. In sum, the facts reflect that 19-year-old Light-

Roth committed a cold-blooded murder, threatened others in order to coerce them to help him hide evidence of the murder, attempted to escape from police custody and attempted to suborn perjury while awaiting trial.

Light-Roth shot and killed 19-year-old Tython Bonnett. At the time, Light-Roth was sharing an apartment with Chris Highley and dealing methamphetamine. Bonnett, a friend, came to the apartment to socialize. Light-Roth was convinced that Bonnett had stolen his shotgun. He questioned Bonnett about the shotgun, but Bonnett denied stealing it. Apparently angered at Bonnett's denial, Light-Roth shot Bonnett in the chest as Bonnett sat on a couch. Bonnett screamed out in pain and yelled "oh, God, Kevin, don't kill me," before dying on the couch.

Light-Roth told another friend who had witnessed the killing, "[i]f you don't want to be part of this, you can go ahead and leave. But if you say anything . . ." and he made a slicing gesture across his throat. Light-Roth directed his roommate, Highley, to dispose of the body. Highley acquiesced because he was afraid Light-Roth would kill him too. In order to deflect suspicion based on Bonnett's sudden disappearance, Light-Roth told the victim's girlfriend that Bonnett had said he was going to New Mexico.

Once in custody after Bonnett's body was found, Light-Roth used a pen to remove his leg shackles and handcuffs and unsuccessfully attempted to escape from custody. Prior to trial, fellow inmate Justin VanBrackle was identified as a defense witness at trial, but when interviewed by police he admitted that Light-Roth had asked him to lie, and in exchange for his testimony, Light-Roth would make sure the witnesses in VanBrackle's trial did not testify.

At sentencing, the State requested the maximum standard range sentence of 335 months. App. at 45. The State argued that the murder was committed in cold blood, that Light-Roth had coerced others with threats of violence to help him cover up the murder, and then attempted to suborn perjury. App. at 45. The prosecutor also noted that the murder occurred just seven months after Light-Roth was released from custody for an adult robbery conviction. App. at 47. Defense counsel asked for a "mid or low range" sentence. App. at 50. The court imposed the highest sentence possible, stating "I am satisfied that Mr. Light-Roth demonstrates classic sociopathic behavior, didn't care about anybody but himself, and I am satisfied that he is dangerous." App. at 57.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

1. THE COURT OF APPEALS DECISION CONFLICTS WITH IN RE PERSONAL RESTRAINT OF GREENING AND THIS COURT'S STANDARD AS TO WHAT CONSTITUTES A SIGNIFICANT CHANGE IN THE LAW.

The Court of Appeals erred and ignored this Court's standard for what constitutes a significant change in the law, in granting Light-Roth's untimely petition. There has been no significant change in the law material to Light-Roth's sentence that would allow him to obtain relief through an untimely petition.

RCW 10.73.090 provides that no collateral attack on a judgment and sentence may be filed more than one year after the judgment becomes final, if it is valid on its face. RCW 10.73.090(1). RCW 10.73.100 provides an exception to the time bar where:

> There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

RCW 10.73.100(6). This Court has defined the scope of this exception:

> We hold that where an intervening opinion has **effectively overturned** a prior appellate decision that was originally determinative of a material issue, the intervening opinion constitutes a "significant change in the law" for purposes of exemption from procedural bars.

In re Pers. Restraint of Greening, 141 Wn.2d 687, 697, 9 P.3d 206 (2000) (emphasis added). A decision that settles a point of law without overturning precedent does not constitute a significant change in the law. State v. Miller, 185 Wn.2d 111, 114-15, 371 P.3d 528 (2016); In re Pers. Restraint of Domingo, 155 Wn.2d 356, 368, 119 P.3d 816 (2005); In re Pers. Restraint of Turay, 150 Wn.2d 71, 83, 74 P.3d 1194 (2003). For the exception to apply, the law itself must change, not practitioners' understanding of the law. Miller, 185 Wn.2d at 116. In granting this petition, the Court of Appeals held that State v. O'Dell, 183 Wn.2d 680, 358 P.3d 359 (2015), is a significant change in the law.

However, in O'Dell, this Court explicitly reaffirmed what it had held previously in State v. Ha'mim, 132 Wn.2d 834, 846, 132 P.2d 633 (1997): an exceptional sentence below the standard range may not be imposed on the basis of youth alone, but a

defendant's youth may be considered as to whether the defendant lacked the capacity to appreciate the wrongfulness of his conduct or the ability to conform his conduct to the law, as provided in RCW 9.94A.535(1)(e). O'Dell, 183 Wn.2d at 689. This statutory mitigating factor has existed since the enactment of the SRA, and trial courts have never been barred from considering a defendant's youth at sentencing. Id. See former RCW 9.94A.390(1)(e). This Court did not effectively overturn Ha'mim. Indeed, this Court explained its decision as follows:

> . . . [W]e agree with much of the State's interpretation of Ha'mim. That decision did not bar trial courts from considering a defendant's youth at sentencing; it held only that the trial court may not impose an exceptional sentence automatically on the basis of youth, absent any evidence that youth in fact diminished a defendant's culpability. But we also conclude that the trial court in this case improperly interpreted Ha'mim just as O'Dell does: to bar any consideration of the defendant's youth at sentencing.

O'Dell, 183 Wn.2d at 689. This Court also stated:

> It remains true that age is not a per se mitigating factor automatically entitling every youthful defendant to an exceptional sentence. In this respect, we adhere to our holding in Ha'mim.

Id. at 695. This Court cautioned that in light of new scientific studies about adolescent brain development, the mitigating factor may be easier to establish than previously believed, but this Court

did not change the legal framework. It did not effectively overturn its holding in Ha'mim.

It should also be noted that the Court of Appeals decision in this case runs counter to the doctrine of legislative acquiescence. "When considering challenges to previous *statutory* interpretations, '[t]his court presumes that the legislature is aware of judicial interpretations of its enactments and takes its failure to amend a statute following a judicial decision interpreting that statute to indicate legislative acquiescence in that decision.'" State v. Otton, 185 Wn.2d 673, 685-86, 374 P.3d 1108 (2016) (quoting City of Federal Way v. Koenig, 167 Wn.2d 341, 348, 217 P.3d 1172 (2009)) (emphasis in original).

If Ha'mim had held that youth could not be a mitigating circumstance, then the legislature acquiesced in that holding by making no subsequent changes to the statute. If the legislature acquiesced in the Ha'mim holding, then this Court would not have been at liberty to change the meaning of the statute in O'Dell.

The better and correct analysis is that Ha'mim did not foreclose exceptional sentences based on particular attributes of youth relevant to culpability, and that O'Dell correctly interpreted Ha'mim and did not change the law.

The Court of Appeals decision conflicts with In re Greening by ignoring the standard imposed by this Court for finding a significant change in the law. Review is warranted.

2. THE COURT OF APPEALS ERRED IN GRANTING RELIEF WHERE LIGHT-ROTH DID NOT REQUEST AN EXCEPTIONAL SENTENCE.

Even if O'Dell was a significant change in the law, Light-Roth is not entitled to relief. Light-Roth did not request an exceptional sentence below the standard range at sentencing and the court showed no inclination to be lenient. This fact should prevent relief in this case because: 1) the decision in O'Dell cannot be material to Light-Roth's sentence; and 2) there was no trial court error in imposing a standard range sentence, let alone a fundamental defect resulting in a complete miscarriage of justice justifying relief by personal restraint petition.

Contrast this case to In re Pers. Restraint of Mulholland, 161 Wn.2d 322, 166 P.3d 677 (2007). Mulholland was convicted of six counts of assault in the first degree and one count of drive-by shooting. Id. at 324-25. Mulholland requested that the sentences be imposed concurrently with each other. Id. at 325. The sentencing court denied the request, stating that it had no discretion to do so. Id. After his conviction and sentence were

affirmed, Mulholland filed a *timely* PRP challenging the trial court's conclusion that it could not impose concurrent sentences. Id. at 326. This Court concluded that the court did have discretion to impose the sentences concurrently. Id. at 331. This Court noted that the standard for relief when alleging a nonconstitutional error is an error that "constitutes a fundamental defect which inherently results in a complete miscarriage of justice." Id. at 332. This Court found that the sentencing court's mistake of law met that standard. Id. at 333. Moreover, the record indicated there was a possibility that, had the trial court properly understood the law, it would have imposed a lower sentence. Id. at 334.

Light-Roth's case is fundamentally different. He did not request an exceptional sentence. There is no showing that the trial court misunderstood the law. There is moreover no reasonable possibility that the court would have imposed an exceptional sentence, if requested. The court imposed the highest sentence authorized based on its evaluation that Light-Roth is a danger to society.

The Court of Appeals erred in concluding that O'Dell was material to Light-Roth's sentence where the trial court did not deny a request for an exceptional sentence. Similarly, the Court of

Appeals erred in finding a nonconstitutional error that resulted in a complete miscarriage of justice where an exceptional sentence was not requested and the record contains no support for a claim that the court might have imposed a more lenient sentence.[1]

3. THIS CASE PRESENTS AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST.

In its opinion, the Court of Appeals quotes the State's caution about the breadth of its holding: "It is important to note, that under Light-Roth's reasoning, every offender of an arguably youthful age who was previously sentenced would now be entitled to a new sentencing proceeding." App. at 16.

---

[1] Granting relief for a nonconstitutional error in this case is particularly troubling as Washington Const. art. I, sec. 13 right to habeas corpus is limited to facially invalid judgments. See generally In re Pers. Restraint of Runyan, 121 Wn.2d 432, 441-43, 853 P.2d 424 (1993). A judgment is facially invalid if it appears from the four corners of the judgment that the court acted without jurisdiction. As to sentencing matters, a judgment is facially invalid when the sentence is beyond the court's jurisdiction. See Horner v. Webb, 19 Wn.2d 51, 56-57, 141 P.2d 151 (1943) (relief proper "where a court enters an excessive sentence, as, for example, twenty years, when the maximum provided is but ten" as the vice with the sentence "'is not merely that it is an excessive duration, but that it is absolutely unauthorized'"). The legislatively expanded right to habeas corpus is limited to constitutional claims, with a few exceptions that are inapplicable here. See RCW 7.36.130(1)(a). The maximum penalty for the defendant's offense is life. See RCW 9A.20.021(1)(a); RCW 9A.32.050(2). The court imposed a standard range sentence. The legislature, moreover, expressly bars appeals from standard range sentences, let alone collateral attacks on standard range sentences. See RCW 9.94A.585(1). Thus, the Court of Appeals' decision in this case conflicts with the Washington constitution, numerous statutes and a number of cases issued by this Court in finding that a constitutional, statutorily authorized sentence is nonetheless a fundamental defect that inherently results in a complete miscarriage of justice.

Light-Roth was 19 when he committed this crime. Thus, the Eighth Amendment as applied in Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), has no application to this case.[2] There is *absolutely no constitutional basis* for Light-Roth's challenge to his sentence of 28 years.

Under the guise of statutory construction, the holding in this case essentially divests the legislature of its authority to enact sentencing laws that apply to youthful adult offenders. The sentencing court in this case imposed a sentence within the legislatively-enacted standard range. Light-Roth did not request that the court depart from that range. Light-Roth presented no evidence or argument that his "capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her

---

[2] Regarding the age of 18 as the line drawn for purposes of the constitutionality of certain punishments, the Supreme Court has explained: "Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn. . . . The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest." Roper v. Simmons, 543 U.S. 551, 574, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). See also State v. Witherspoon, 180 Wn.2d 875, 329 P.3d 888 (2014); State v. Hart, 188 Wn. App. 453, 353 P.3d 253 (2015).

conduct to the requirements of the law, was significantly impaired." RCW 9.94A.535(1)(e). There is no support in the record for a claim of diminished culpability based on youth. Nothing about his behavior can be explained as youthful impulsivity or peer pressure.

This Court in O'Dell stated "It remains true that age is not a per se mitigating factor automatically entitling every youthful defendant to an exceptional sentence." O'Dell, 183 Wn.2d at 695. Yet in granting review in this case, the Court of Appeals essentially presumes that every youthful adult offender is entitled to an exceptional sentence, and thus it matters not whether defense counsel requested an exceptional sentence or whether the sentencing court showed any indication of wanting to show leniency.

If Light-Roth is entitled to resentencing, then there is no obvious limiting principle that would prevent any other youthful adult offender from seeking resentencing. The holding in this case, if allowed to stand, would necessitate countless resentencing

hearings at great cost to society and the court system.[3] Review is warranted.

F. CONCLUSION.

Because the Court of Appeals decision conflicts with this Court's precedents and involves an issue of substantial public interest, review should be granted.

DATED this 6th day of September, 2017.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: _____
ANN SUMMERS, WSBA #21509
Senior Deputy Prosecuting Attorney
Attorneys for Petitioner
Office WSBA #91002

[3] The Court of Appeals in Light-Roth does not identify who qualifies as a youthful adult offender, so the full impact of the decision cannot be determined. While Light-Roth was 19 years old, defendants will likely cite to language in a footnote in O'Dell suggesting that the brain is not fully mature until age 25. Some sense of the number of resentencings can be developed from state reports and legislative documents. During fiscal years 2014, 2015, and 2016, 18,951 adults were sentenced for felonies committed while they were between the ages of 18 and 24. See State of Washington Caseload Forecast Council, *Statistical Summary of Adult Felony Sentencing Fiscal Year 2016,* Table 20, pg. 52 (Dec. 2016); State of Washington Caseload Forecast Council, *Statistical Summary of Adult Felony Sentencing Fiscal Year 2015,* Table 20, p. 53 (Jan. 2016); State of Washington Caseload Forecast Council, *Statistical Summary of Adult Felony Sentencing Fiscal Year 2014,* Table 20, pg. 54 (Mar. 2015). In King County alone, the State anticipates that the decision in Light-Roth could lead to motions for resentencing in over 200 *murder* cases (offenders currently in custody convicted of murder committed between the ages of 18 and 23). Including cases from other counties, and other crimes, the number of cases potentially affected is in the thousands.

Appendix

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of KEVIN LIGHT-ROTH, Petitioner.	No. 75129-8-I DIVISION ONE PUBLISHED OPINION FILED: August 14, 2017

TRICKEY, A.C.J. — In this personal restraint petition, Kevin Light-Roth challenges his sentence for his 2004 conviction of murder in the second degree. He argues that his sentence is invalid because the trial court did not meaningfully consider whether his youthfulness justified an exceptional sentence below the standard range.

Although this is Light-Roth's second petition and is beyond the one-year time bar for collateral attacks on the judgment, he argues that we may consider it because of a significant change in the law. He contends that the recent Supreme Court decision in State v. O'Dell significantly broadened the circumstances under which a defendant's youthfulness may justify an exceptional sentence below the standard range. 183 Wn.2d 680, 695-96, 358 P.3d 359 (2015).

The State responds that O'Dell is not a significant change in the law because the court did not overrule its decision in State v. Ha'mim. O'Dell, 183 Wn.2d at 685 (citing Ha'mim, 132 Wn.2d 834, 847, 940 P.2d 633 (1997)). In O'Dell, the court said there was a "clear connection between youth and decreased moral culpability for criminal conduct." 183 Wn.2d at 695. But in Ha'mim, the court stated that the "age of the defendant does not relate to the crime or the previous

record of the defendant," and cited with approval a Court of Appeals decision characterizing as absurd the argument that a defendant's youth might justify imposing a more lenient sentence. 132 Wn.2d at 846-47 (citing State v. Scott, 72 Wn. App. 207, 218-19, 866 P.2d 1258 (1993), aff'd, State v. Ritchie, 126 Wn.2d 388, 894 P.2d 1308 (1995)).

Accordingly, we hold that O'Dell expanded youthful defendants' ability to argue for an exceptional sentence, and was a significant change in the law. Because that change in the law was material to Light-Roth's sentence and applies retroactively, we may consider Light-Roth's petition. We conclude that Light-Roth deserves an opportunity to have a sentencing court meaningfully consider whether his youthfulness justifies an exceptional sentence below the standard range. Therefore, we grant Light-Roth's petition.

FACTS

In 2003, when he was 19 years old, Light-Roth shot and killed Tython Bonnett.[1]

In 2004, Light-Roth was convicted of murder in the second degree.[2] Light-Roth asked for a low- or mid-range sentence. He pointed out that he was only 21 years old at the time of sentencing, but he did not seek an exceptional sentence downward on the basis of his youthfulness at the time of the murder. The trial court imposed the maximum standard range sentence of 335 months.[3]

---

[1] State v. Light-Roth, noted at 139 Wn. App. 1093, 2007 WL 2234613, at *1. Unless otherwise specified, all references to ages of various defendants are to the ages at which those defendants committed their crimes.
[2] Light-Roth, 2007 WL 2234613 at *5.
[3] The sentence includes a 60-month mandatory sentence enhancement for use of a deadly weapon. Light-Roth was also convicted of unlawful possession of a firearm. The court

In 2008, this court issued its mandate in Light-Roth's direct appeal, and the judgment in his case became final.

In 2009, Light-Roth brought his first personal restraint petition, alleging numerous errors, none of which related to his sentence or youthfulness. In 2010, this court dismissed that petition.

In 2015, the Supreme Court issued its opinion in O'Dell. 183 Wn.2d 680.

In 2016, Light-Roth filed this second personal restraint petition, challenging his sentence.

ANALYSIS

Timeliness

The State argues that this court should dismiss Light-Roth's petition as untimely because Light-Roth filed it more than one year after the judgment in his case became final. While this petition would normally be untimely, we hold that we may consider it because of O'Dell, which announced a significant, material change in the law that applies retroactively.

"No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction." RCW 10.73.090(1). A judgment becomes final when an appellate court issues its mandate disposing of the direct appeal. RCW 10.73.090(3)(b).

But there are exceptions to the one-year time limit. RCW 10.73.100. The

---

imposed slightly less than the maximum standard range for Light-Roth's conviction for that charge.

one-year limit does not apply to a petition that is based solely on the ground that there has been (1) a significant change in the law, (2) that is material to the defendant's sentence, and (3) applies retroactively. RCW 10.73.100(6).[4]

Here, Light-Roth's sentence became final in 2008. He filed this petition in 2016. Therefore, he may pursue this petition only if he can satisfy all three prongs of RCW 10.73.100(6). We conclude that he can.

Significant Change in the Law

Light-Roth argues that O'Dell announced a significant change in the law because it changed "the law regarding the evidence that is relevant to decreased culpability" and changed the showing required to merit a sentencing court's consideration of an offender's youth.[5] The State argues that O'Dell did not announce a significant change in the law because it did not overrule established precedent. We agree with Light-Roth because defendants could not successfully argue that their youth diminished their culpability before O'Dell.

A significant change in the law occurs when "an intervening appellate decision overturns a prior appellate decision that was determinative of a material issue." State v. Miller, 185 Wn.2d 111, 114, 371 P.3d 528 (2016). An appellate decision that "'settles a point of law without overturning prior precedent' or 'simply applies settled law to new facts'" does not constitute a significant change in the law. Miller, 185 Wn.2d at 114-15 (quoting In re Pers. Restraint of Turay, 150 Wn.2d 71, 83, 74 P.3d 1194 (2003)). But appellate courts will usually find a significant

[4] There are several other exceptions to the time limit, which are not relevant to this petition. RCW 10.73.100(1)-(5).
[5] Personal Restraint Petition (PRP) at 5.

change in the law when the defendant could not have argued an issue before the new appellate decision was published. Miller, 185 Wn.2d at 115. The change must be a change in the law itself; a change in counsels' understanding of the law is not enough. Miller, 185 Wn.2d at 116.

In State v. Miller, the court held that State v. Mulholland had not announced a significant change in the law because, there, the court stated explicitly that the question it was confronted with was "'a question [it had] not directly addressed,'" 185 Wn.2d at 116 (quoting Mulholland, 161 Wn.2d 322, 328, 166 P.3d 677 (2007)).

In In re the Personal Restraint of Flippo, Earl Flippo petitioned the Supreme Court to review the discretionary legal financial obligations (LFOs) imposed on him, arguing that there had been a significant change in the law since his sentence. 187 Wn.2d 106, 108, 385 P.3d 128 (2016) (citing State v. Blazina, 182 Wn.2d 827, 837-38, 344 P.3d 680 (2015) (holding that the trial court must make an "individualized inquiry into the defendant's current and future ability to pay" before imposing discretionary LFOs and that the record must reflect that inquiry)). The court dismissed Flippo's petition because it concluded that Blazina had clarified the trial court's requirements under RCW 10.01.160(3) but had not "change[d] anything about the meaning of that statue or any other material provision of law." Flippo, 187 Wn.2d at 112. The court reasoned that, "prior to Blazina, a defendant could certainly request that the court perform an individualized inquiry pursuant to the statute." Flippo, 187 Wn.2d at 112.

Flippo argued that such a request would have been "futile" because controlling precedent established that the trial court did not need to "'enter formal,

specific findings regarding a defendant's ability to pay.'" Flippo, 187 Wn.2d at 112-13 (quoting State v. Curry, 118 Wn.2d 911, 916, 829 P.2d 166 (1992)). The court rejected Flippo's argument, holding that, although Blazina explained what the trial court was required to do, "nothing about those requirements changed with Blazina." Flippo, 187 Wn.2d at 113. The court acknowledged that some practitioners had had a mistaken understanding of the law, but nevertheless, held that there was no significant change in the law. Flippo, 187 Wn.2d at 113.

Here, the parties dispute whether O'Dell announced a change in the interpretation of the mitigating factors justifying an exceptional sentence below the standard range under the Sentencing Reform Act of 1981, chapter 9.94A RCW (SRA). The court may impose a sentence below the standard range when the "defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired." RCW 9.94A.535(1)(e).

The court may also impose an exceptional sentence on the basis of a nonstatutory mitigating factor. RCW 9.94A.535(1). The factor may not be something that "the legislature *necessarily* considered" when establishing the sentence range and it must be "'sufficiently substantial and compelling to distinguish the crime in question from others in the same category." O'Dell, 183 Wn.2d at 690 (quoting Ha'mim, 132 Wn.2d at 840).

In 1993, in State v. Scott, the Court of Appeals rejected as bordering "on the absurd" an argument that a 17-year-old murder defendant's youth lessened his

culpability.[6] 72 Wn. App. at 218-19. The court acknowledged that "teenagers are more impulsive than adults and lack mature judgment," but stated that "[p]remediated murder is not a common teenage vice." Scott, 72 Wn. App. at 219.

In 1997, in State v. Ha'mim, an 18-year-old defendant requested an exceptional sentence below the standard range on the basis of her youth and her absence of police contacts. 132 Wn.2d 834, 837, 940 P.2d 633 (1997). The trial court imposed the exceptional sentence downward, relying on the defendant's youth as a mitigating factor. Ha'mim, 132 Wn.2d at 838.

The Supreme Court reversed. Ha'mim, 132 Wn.2d at 848. It declined "to hold that age alone may be used as a factor to impose an exceptional sentence outside of the standard range." Ha'mim, 132 Wn.2d at 846. The court noted that age "could be relevant" to the statutory mitigating factor that the defendant's capacity to appreciate the wrongfulness of her conduct or conform her behavior to the law was impaired. Ha'mim, 132 Wn.2d at 846. But the court noted that the trial court had made "no such finding." Ha'mim, 132 Wn.2d at 846.

The court also stated that age alone could not be a nonstatutory mitigating factor. Ha'mim, 132 Wn.2d at 847. The court held that "the age of a young adult defendant is not alone" a "substantial and compelling" factor. Ha'mim, 132 Wn.2d at 847. It also held that the "age of the defendant does not relate to the crime or the previous record of the defendant." Ha'mim, 132 Wn.2d at 847.

In 2005, in State v. Law, the Supreme Court engaged in a detailed

[6] The defendant was challenging the trial court's imposition of an exceptional sentence *above* the standard range, but cited statutes for mitigating factors justifying a sentence below the standard range, specifically former RCW 9.94A.390(1)(e) (1992) (recodified as RCW 9.94A.535(1)(e)). Scott, 72 Wn. App. at 218-19.

discussion of what may constitute a nonstatutory factor justifying a sentence below the standard range. 154 Wn.2d 85, 94-98, 110 P.3d 717 (2005). The court explained that it had "rejected the use of age as a mitigating factor" in Ha'mim. Law, 154 Wn.2d at 98. The court quoted Ha'mim's conclusion that the defendant's age does not relate to the crime or record of the defendant. Law, 154 Wn.2d at 98 (quoting Ha'mim, 132 Wn.2d at 847). The court went on to state that, in Ha'mim, it had held "that this personal factor was not a substantial and compelling reason to impose an exceptional sentence." Law, 154 Wn.2d at 98.

A decade later, in O'Dell, the Supreme Court revisited "the same question" it had considered in Ha'mim. 183 Wn.2d at 689. It determined that Ha'mim had correctly held that courts may not impose an exceptional sentence on the basis of youth unless there is evidence "that youth in fact diminished a defendant's culpability." O'Dell, 183 Wn.2d at 689. But the court noted that, in Ha'mim, it had not had the benefit of studies about "adolescents' cognitive and emotional development," which have since established "a clear connection between youth and decreased moral culpability for criminal conduct." O'Dell, 183 Wn.2d at 695.[7]

Accordingly, the Supreme Court disapproved of its earlier, "sweeping conclusion" that "'[t]he age of the defendant *does not relate to the crime* or the previous record of the defendant.'" O'Dell, 183 Wn.2d at 695 (alteration in original) (quoting Ha'mim, 132 Wn.2d at 847). The court held that, while "age is not a per

[7] The studies the court relied on were essential to the United States Supreme Court's decisions in Roper v. Simmons, 543 U.S. 551, 569-70, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005); Graham v. Florida, 560 U.S. 48, 71, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010); and Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 2465, 183, L. Ed. 2d 407 (2012). O'Dell, 183 Wn.2d at 685, 691, 695.

se mitigating factor," it was "far more likely to diminish a defendant's culpability than" the court had implied in Ha'mim. O'Dell, 183 Wn.2d at 695-96. The court concluded that "in particular cases" youth could amount to a substantial and compelling factor justifying a sentence below the standard range. O'Dell, 183 Wn.2d at 696. The court explicitly disavowed any reasoning in Ha'mim that was inconsistent with its opinion. O'Dell, 183 Wn.2d at 696.

When describing how the defendant might be able "to establish that youth diminished his capacities for purposes of sentencing," the court explained that the defendant would not need to present expert testimony. O'Dell, 183 Wn.2d at 697. The court cited examples from the record of the type of "lay testimony that a trial court should consider," including family member depictions of the defendant as an "'immature kid,'" descriptions of the defendant's hobbies, including hiking and playing video games, and the way he interacted with his family. O'Dell, 183 Wn.2d at 697-98. All of the examples related to the defendant's immaturity, rather than the specific circumstances of his crime or criminal record. O'Dell, 183 Wn.2d at 697-98.

This court has not yet considered whether O'Dell announced a significant change in the law for purposes of personal restraint petitions. But, in State v. Ronquillo, this court recognized that O'Dell has impacted the use of youth as a mitigating factor. 190 Wn. App. 765, 780-83, 361 P.3d 779 (2015).

In that case, Brian Ronquillo, a minor defendant who had been sentenced in adult court, sought an exceptional sentence based on his youthfulness, relying

on research on juvenile brain development.[8] Ronquillo, 190 Wn. App. at 773-74. The trial court found the evidence "'incredibly compelling'" but, after reviewing Ha'mim and Law, refused to grant the exceptional sentence. 190 Wn. App. at 773-74. The trial court explained that it felt "'constrained'" by the law. Ronquillo, 190 Wn. App. at 773-74. As the Court of Appeals explained, at the time of Ronquillo's sentencing, his "youthfulness was not, by itself, a mitigating factor that could justify a downward departure." Ronquillo, 190 Wn. App. at 771 (citing Law, 154 Wn.3d at 97-98; Ha'mim, 132 Wn.2d at 847).

But, while Ronquillo's appeal to this court was pending, the Supreme Court issued its opinion in O'Dell.[9] This court concluded that O'Dell had "significantly revised the interpretation of Ha'mim relied on by the trial court." Ronquillo, 190 Wn. App. at 780-81. Noting that O'Dell did not "'overrule Ha'mim,'" the Court of Appeals nevertheless concluded that, following O'Dell, trial courts may consider age "'as a possible mitigating factor.'" Ronquillo, 190 Wn. App. at 783 (quoting O'Dell, 183 Wn.2d at 689).

Ronquillo demonstrates that, until O'Dell, defendants could not meaningfully argue that youthfulness was a mitigating factor under RCW 9.94A.535(1)(e) or as a nonstatutory mitigating factor. O'Dell did not technically overrule Ha'mim, but the court notes it was addressing the same question it had already addressed in Ha'mim, and it came to a different conclusion. It would be

[8] This was a resentencing. The court had already remanded the case once for a new sentencing hearing because the defendant's original sentence relied on a miscalculation of Ronquillo's offender score. Ronquillo, 190 Wn. App. at 770-71.
[9] Ronquillo's resentencing was on March 21, 2004. Ronquillo, 190 Wn. App. at 773. O'Dell was decided on August 13, 2015. 183 Wn.2d at 680. Ronquillo was decided by this court on October 26, 2015. 190 Wn. App. at 765.

disingenuous to suggest that O'Dell merely clarified Ha'mim's holding or applied settled law to new facts.

Law and Ha'mim together effectively prevented trial courts from considering whether a young adult defendant's age diminished his or her culpability unless something else tied the defendant's youth to the crime itself. Under O'Dell, trial courts are allowed to consider the defendant's youth and immaturity. In short, O'Dell approved of the argument that the earlier cases characterized as absurd. Thus, unlike Flippo, Light-Roth could not "certainly request" an exceptional sentence based on his youth. Flippo, 187 Wn.2d at 112. Accordingly, we conclude that O'Dell announced a significant change in the law.

Applied Retroactively

"Whether a changed legal standard applies retroactively is a distinct inquiry from whether there has been a significant change in the law." In re Pers. Restraint of Tsai, 183 Wn.2d 91, 103, 351 P.3d 138 (2015). We conclude that O'Dell should be applied retroactively because it announced a new interpretation of the SRA.

"Once the Court has determined the meaning of a statute, that is what the statute has meant since its enactment." In re Pers. Restraint of Johnson, 131 Wn.2d 558, 568, 933 P.2d 1019 (1997). Accordingly, that meaning applies retroactively. See Johnson, 131 Wn.2d at 568; see also In re Pers. Restraint of Hinton, 152 Wn.2d 853, 859-60, 100 P.3d 801 (2004).

O'Dell announced a change in the interpretation of the SRA, specifically RCW 9.94A.535(1) and RCW 9.94A.535(1)(e).[10] 183 Wn.2d at 694-96. Because

[10] In O'Dell, the court relies on studies cited in United States Supreme Court cases discussing evolving standards for the treatment of juveniles under the Eight Amendment,

the SRA is a statute, courts should apply this new interpretation retroactively.

Material to Sentence

Light-Roth argues that the change in the law announced in O'Dell is material to his sentence because he was only 19 years old when he committed his crime and because his crime bears many hallmarks of immaturity. The State argues that, even if O'Dell announced a significant change in the law, it is not material to Light-Roth's sentence because Light-Roth did not seek an exceptional sentence downward based on his youth.

It is unreasonable to hold that a case announced a significant change because it made a new argument available to a defendant, and then hold that the change is not material because the defendant did not make that argument. We conclude that the change in the law O'Dell announced was material to Light-Roth's sentence because, under O'Dell, Light-Roth can now argue that his youth justified an exceptional sentence below the standard range.

To qualify for the exception to the one-year time bar, the change in the law must be material to the defendant's sentence. RCW 10.73.100(6). In State v. Scott, the court addressed whether Miller, which held "that a sentence of life without parole is unconstitutional for most juvenile offenders," was material to the sentence of a juvenile defendant who had received a de facto life sentence. 196 Wn. App. 961, 963, 385 P.3d 783 (2016), review granted, No. 94020-7, 2017 WL 1736726 (Wash. May 3, 2017). The parties agreed that Miller had announced a

---

but O'Dell does not base its departure from Ha'mim on Eighth Amendment grounds. See 183 Wn.2d at 695 (citing Miller, 567 U.S. 460; Roper, 543 U.S. 551; Graham, 560 U.S. 48).

significant change in the law and that it applied retroactively. Scott, 196 Wn. App. at 965.

The State argued that Miller was not material to the defendant's sentence because the trial court had imposed the sentence as an exercise of discretion, not as a result of a mandatory scheme. Scott, 196 Wn. App. at 970. The Court of Appeals disagreed, holding that because the sentencing judge "did not meaningfully consider [the defendant's] age as a mitigating factor," the defendant's sentence fell "squarely within the constitutional concerns expressed in Miller." Scott, 196 Wn. App. at 970.

But the State also argued that Miller was not material to the defendant's sentence because any violation had been cured by the legislature's passage of a Miller-fix statute. Scott, 196 Wn. App. at 970-71. Under the Miller-fix statute, "a juvenile offender is presumptively eligible for early release after serving no less than 20 years." Scott, 196 Wn. App. at 971 (citing RCW 9.94A.730). The court agreed with the State, holding that Miller was not material to the defendant's sentence because, under the Miller-fix statute, the defendant was "no longer serving a sentence that is the equivalent of life without parole." Scott, 196 Wn. App. at 971-72.

By contrast, in In re Pers. Restraint of Rowland, the court held that a change in how the court compares convictions from other states was material to a petitioner's conviction because it led to a miscalculation of the petitioner's offender score, even though the trial court imposed an exceptional sentence above the standard range. 149 Wn. App. 496, 507, 204 P.3d 953 (2009).

Here, Light-Roth received the maximum standard range sentence for his conviction of murder in the second degree. He was only 19 years old at the time he committed the offense. Light-Roth's actions immediately following his arrest, including attempting to escape via the ceiling of his interrogation room, demonstrate impulsivity and immaturity.[11]

Further, Light-Roth's mother declared that, as a 19-year-old, Light-Roth "still continued to exhibit substantial impulsivity and a limited ability to manage his behavior by thinking through the consequences of his actions and by being drawn to risky and exciting behaviors."[12] Light-Roth's cousin declared that Light-Roth was "stunted socially and emotionally due to unintentional neglect," and that Light-Roth was a "troubled teenager" struggling to "fit in and be accepted by his peers."[13] Their statements are similar to the examples of "lay testimony" the Supreme Court provided in O'Dell for the purpose of "evaluating whether youth diminished a defendant's culpability." See, 183 Wn.2d at 697-98.

As the State points out, Light-Roth did not request an exceptional sentence downward on the basis of his youthfulness. But, as discussed above, Light-Roth could not have successfully argued that his youthfulness entitled him to an exceptionally lenient sentence until O'Dell. Therefore, Light-Roth has shown that, had O'Dell been decided before he was sentenced, he could have argued that his youthfulness justified an exceptional sentence below the standard range. We

[11] Light-Roth, 2007 WL 2234613 at *4.
[12] PRP App. C at 1.
[13] PRP App. C at 3.

conclude that the denial of an opportunity to seek an exceptional sentence is sufficient to make O'Dell material to Light-Roth's sentence.

Accordingly, we conclude that Light-Roth's petition is based solely on the ground that there has been a significant, material change in the law that applies retroactively. Thus, the petition falls into the exception for the one-year time bar and is timely.

Barred as Successive

The State argues that, in addition to being untimely, this court may not address the merits of Light-Roth's petition because it is successive. But the State appears to concede that, if O'Dell announced a significant change in the law, that change would amount to good cause to excuse Light-Roth's otherwise successive petition.

"If a person has previously filed a petition for personal restraint, the court of appeals will not consider the petition unless the person certifies that he or she has not filed a previous petition on similar grounds, and shows good cause why the petitioner did not raise the new grounds in the previous petition." RCW 10.73.140. "A significant intervening change in the law resulting from a court decision satisfies the good cause requirement." In re Pers. Restraint of Flippo, 191 Wn. App. 405, 409, 362 P.3d 1011 (2015), aff'd, 187 Wn.2d 106, 385 P.3d 128 (2016); see also State v. Brown, 154 Wn.2d 787, 794, 117 P.3d 336 (2005).

This is Light-Roth's second personal restraint petition. Thus, we should not consider it unless Light-Roth can show good cause. But, as discussed, O'Dell announced a significant and material change in the law. Therefore, Light-Roth has

shown good cause, and, his petition is not barred as successive.

Because we conclude that Light-Roth's petition is timely and not successive, we reach the merits of the petition.

Miscarriage of Justice

In its response, the State appears to concede that, if the petition is timely, Light-Roth is entitled to a resentencing hearing. The State asserts, "It is important to note, that under Light-Roth's reasoning, every offender of an arguably youthful age who was previously sentenced would now be entitled to a new sentencing proceeding."[14] We treat this argument as a concession that Light-Roth is entitled to relief if we reach the merits of his petition.

"When nonconstitutional grounds are asserted for relief from personal restraint, the petitioner must establish that he is unlawfully restrained, and that the unlawful restraint is due to a fundamental defect that inherently results in a miscarriage of justice." Rowland, 149 Wn. App. at 507.

Light-Roth's claimed defect is that he was precluded from arguing to the trial court that his youth was a mitigating factor that it could consider. In O'Dell, the court concluded that failing to consider youth was a failure to exercise discretion, which was "itself an abuse of discretion subject to reversal." 183 Wn.2d at 697. The court relied on State v. Grayson, in which the court held that a court abused its discretion by failing to consider a defendant's request for a drug offender sentencing alternative. O'Dell, 183 Wn.2d at 697 (citing Grayson, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005)). In both cases, the court remanded for a

[14] Resp. to PRP at 9.

new sentencing hearing.[15] O'Dell, 183 Wn.2d at 697; Grayson, 154 Wn.2d at 342-43. Thus, the trial court's failure to consider Light-Roth's youth as a mitigating factor is reversible error.

This court has previously suggested that a sentencing error may be harmless in a personal restraint petition context. In Rowland, this court addressed the merits of a petition after concluding that it fell under the exception to the one-year time bar. 149 Wn. App. at 507. The trial court had improperly calculated the petitioner's offender score before imposing an exceptional sentence. Rowland, 149 Wn. App. at 508. The court held that, under those circumstances, "remand is the remedy unless the record clearly indicates the sentencing court would have imposed the same sentence anyway." Rowland, 149 Wn. App. at 508. But the State has made no argument that any error in this case was harmless.

We grant Light-Roth's petition and remand for resentencing.

Trickey, ACJ

WE CONCUR:

Appelwick, J.

Cox, J.

[15] Light-Roth's situation is also distinguishable because, in each case, the party had sought the relief the trial court failed to consider granting. Here, neither party appears to suggest that Grayson or O'Dell hold that, going forward, a court must consider an exceptional sentence below the standard range for young adult defendants, regardless of whether the defendant requests one.

14966405

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

KEVIN LIGHT-ROTH,

Appellant.

No. 54509-4-I

MANDATE

King County Superior Court No. 03-1-00392-8.KNT

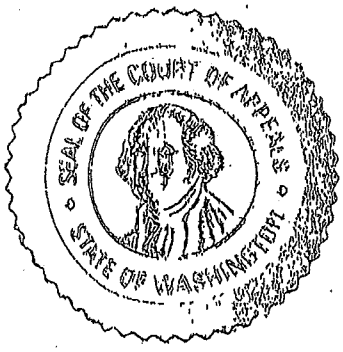
FILED
KING COUNTY, WASHINGTON
JUN 11 2008
SUPERIOR COURT CLERK

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on August 6, 2007, became the decision terminating review of this court in the above entitled case on May 28, 2008. An order denying a petition for review was entered in the Supreme Court on April 30, 2008. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

Pursuant to RAP 14.4 costs in the amount of $7,737.01 are to be taxed against judgment debtor KEVIN LIGHT-ROTH as follows: costs in the amount of $7,479.10 are awarded in favor of judgment creditor WASHINGTON OFFICE OF PUBLIC DEFENSE, INDIGENT DEFENSE FUND and costs in the amount of $257.91 are awarded in favor of judgment creditor KING COUNTY PROSECUTOR'S OFFICE.

c: Sheryl Gordon McCloud
Brian McDonald
Hon. Brian Gain
Indeterminate Sentencing Review Board



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 28th day of May, 2008.

RICHARD D. JOHNSON
Court Administrator/Clerk of the Court of Appeals,
State of Washington, Division I.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. KEVIN LIGHT-ROTH, Appellant.	No. 54509-4-I UNPUBLISHED OPINION FILED: August 6, 2007

SCHINDLER, A.C.J. – Kevin Light-Roth appeals his conviction for murder in the second degree while armed with a firearm and unlawful possession of a firearm in the first degree. Although Light-Roth does not challenge the trial court's findings that there were no explicit or implicit agreements for benefits with the witnesses who testified against him, he contends that the State violated the requirements of Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), by failing to disclose that the witnesses had expectations of leniency for their pending charges. Light-Roth also contends that the State misled the jury and violated Napue v. Illinois, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959), by asking one of the witnesses whether he was aware that his testimony probably would be used against him in his trial. In addition, Light-Roth claims the prosecutor committed misconduct by vouching for the credibility of

State witnesses, and the trial court erred in denying his motion for a new trial and admitting testimonial statements in violation of Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. 2d 177 (2004). As to sentencing, Light-Roth asserts the court erred in calculating his offender score and imposing an additional 60-month firearm enhancement. We affirm the convictions and the judgment and sentence.

FACTS

On February 5, 2003, Kevin Light-Roth shot and killed nineteen-year-old Tython Bonnett at Chris Highley's apartment in Federal Way. Highley and his friend, Curtis Stream, witnessed the shooting. Highley testified that while Light-Roth was living with him, Light-Roth supplied him with methamphetamine.

Stream and Bonnett were good friends. For a time, Bonnett dated Stream's sixteen-year-old sister. But after Stream told Bonnett the situation was awkward for him, Bonnett agreed to stopped dating her. About a month before Bonnett was killed, Stream found out that Bonnett had made a videotape of having sex with his sister. After Stream found out about the sex tape, he called Bonnett's then girlfriend, Dollie Sein, a number of times. He told Dollie he knew about the sex tape and wanted to beat up Bonnett. Stream also told a number of other people, including Highley, that he wanted to beat up or kill Bonnett.

On February 5, Stream and Highley spent the day together. They returned to Highley's apartment around 7:00 p.m. Stream testified that when they arrived at Highley's apartment, Light-Roth came around the corner with his Ruger .45 pointed at them. He put the gun down after he recognized them.

That afternoon, Bonnett dropped Dollie off at work, and he told her he would pick her up at 7:30 p.m. Later that evening, Bonnett drove to Highley's apartment. When Bonnett knocked on the apartment door, Highley looked through the peephole and whispered to Stream and Light-Roth, "[i]t's Tython." Highley whispered because he knew that Stream was angry with Bonnett about the sex tape, and that Light-Roth was angry with Bonnett because he thought Bonnett stole his shotgun. Because Stream was surprised Bonnett was there, he decided to go into one of the back bedrooms before Highley opened the door to let him in. In the living room, Light-Roth questioned Bonnett about his missing shotgun. Highley said Bonnett denied taking the gun and appeared nervous. While Light-Roth and Bonnett were still talking, Highley went to the back bedroom to check on Stream. Stream was pacing back and forth in the bedroom with a golf club in his hand, trying to decide whether to confront Bonnett. When Light-Roth came into the bedroom, he handed his gun to Stream. Stream put the gun under his shirt in his waistband. He then went with Light-Roth to confront Bonnett. Bonnett was sitting on the couch in the living room and Highley was sitting in a chair. Stream confronted Bonnett about the sex tape. At first Steam was standing up, but then he sat down in a chair and talked to Bonnett about why he was so angry. Bonnett looked sad and told Stream he was sorry.

Stream and Bonnett were still talking when Light-Roth walked over to Stream, pulled the gun out of Stream's waistband and held it at his side. Light-Roth then said to Bonnett, "'well, it would be nice to see what happened to my shotgun.'" Highley testified that Bonnett laughed nervously and replied, "oh, believe me, if I knew, I would tell you.'"

Light-Roth said, "well, okay", and then he raised the gun and shot Bonnett in the chest. Bonnett arched his back into the couch and screamed out in pain. Bonnett said, "'oh, God, Kevin, don't kill me.'" Bonnett then looked at Stream and said "'don't let him kill me.'" Light-Roth pointed the gun at Bonnett again, but Stream moved in front of Bonnett to prevent Light-Roth from shooting him. Bonnett then closed his eyes and passed out.

Stream told Light-Roth, "'I didn't want this to happen.... Just let me leave.'" Stream said he didn't know what to do and was "just scared." In response, Light-Roth said, "'[I]f you don't want to be a part of this, you can go ahead and leave. But if you say anything....'" Light-Roth then showed him his gun and made a slicing gesture across his throat.

Light-Roth told Highley to pick up Bonnett off the couch. Highley tried, but said Bonnett was too heavy. Light-Roth then told Highley to get trash bags and line the trunk of Light-Roth's car. Highley testified that he followed Light-Roth's directions because he was afraid of Light-Roth and believed Light-Roth would kill him if he left.

After Highley lined the trunk of the car, Light-Roth told him to stay in the apartment and then left. A few minutes later, Shelby Manning and Pamela Marks knocked on the door, but Highley did not answer. As Shelby and Pamela were leaving, they ran into Light-Roth, who was walking back to the apartment from the garage. Light-Roth knocked on the door and told Highley it was okay to let them in.

Because Highley did not want Shelby and Pamela to see Bonnett, he covered up Bonnett's face with his jacket. When Shelby and Pamela asked about the guy on the

couch, Highley said he had been up for a number of days and was trying to catch up on his sleep. When Pamela said she wanted to check on him because he wasn't moving and his skin was blue, Light-Roth yelled at her to leave him alone. At Light-Roth's suggestion, Highley took Shelby and Pamela outside to smoke.

About ten minutes later, when they came back inside, Light-Roth and the guy on the couch were gone. Light-Roth returned approximately fifteen minutes later. He pulled Highley aside, gave him the keys to Dollie Sein's white Honda Accord, a palm pilot, a lighter, and a cell phone case, and told Highley to drive to northeast Tacoma to get rid of the car and other items.

Highley left the white Honda Accord four blocks away from Roddy Ramirez's house in Tacoma. Highley decided to leave the car there in an effort to implicate Ramirez in Bonnett's killing. Ramirez believed Bonnett had broken into his house and stole a number of items. After leaving the car, Highley called two of his friends, but neither answered. Highley then called Light-Roth. Highley said that when Light-Roth picked him up, he said "I thought you freaked out on me and ran out on me, I thought I was going to have to kill you."

When Bonnett did not return to pick Dollie up from work, she called several people trying to find Bonnett. When she called Light-Roth, he told her that he had not seen Bonnett that night but that he would pick her up if Bonnett did not show up.

The next morning, Stream went back to Highley's apartment. Highley, Light-Roth, and his friend Cory Eckholm were at the apartment. After Stream and Highley left, Dollie and two of her friends came by the apartment to ask whether anyone had

seen Bonnett. Light-Roth told Dollie that he had not seen him recently but that Bonnett had said something to him about going back to New Mexico. "'I do remember a couple of days ago [Bonnett] saying he was going to get on a Greyhound or something like that to go back to his hometown in New Mexico.'" Light-Roth suggested Dollie look for her car at a train or bus station.

Later that night Dollie called Eckholm to tell him that based on a news report about a body that was found with a bar code tattoo, she was sure Bonnett was dead. After Eckholm told Light-Roth about Dollie's call, Eckholm and Light-Roth left the apartment and went to Eckholm's house. When they were at Eckholm's, Light-Roth called Shelby to ask whether the police were at Highley's apartment.

Meanwhile, after driving around for several hours, Highley and Stream decided to go to the police. At around 11:00 p.m., they walked into the Federal Way Police Station and said they had information about Bonnett's murder. The police interviewed Highley and Stream separately for several hours. During the interviews, each of them was extremely upset and often cried. After the interviews, the police arrested Highley for rendering criminal assistance.

On February 7, the police searched Highley's apartment. Based on information from Highley, the police also searched a Tacoma gas station waste container and recovered the keys to Dollie's car and Bonnett's lighter. A forensic analysis determined that the bullet recovered from Bonnett's body was a hollow point Winchester fired from a .45 caliber semiautomatic weapon, such as a Ruger.

After staying with Eckholm, Light-Roth called his friend Dan Kolbet and told him he was in trouble and needed to stay with him that night. The next day, Light-Roth returned to Eckholm's house. On February 9, Light-Roth asked Eckholm to cash a $500 money order from his mother. After cashing the money order, Eckholm used his identification to get Light-Roth a room at the Motel 6 in Fife. When Eckholm returned home, the police were there. Eckholm agreed to accompany the police to the Motel 6 in Fife. When the police approached Light-Roth outside the motel, he ran. After a pursuit, the police arrested him.

Light-Roth waived his Miranda[1] rights. In the interview at the police station, Light-Roth denied killing Bonnett and claimed he did not see Bonnett the day he was shot. But when Detective Paynter told Light-Roth that witnesses had reported that he shot Bonnett, Light-Roth replied, "'[t]hose two guys left and drove right to you, didn't they? I can't believe those fuckers did that.'" Light-Roth then told Detective Paynter that he would provide information to the police, but that he wanted immunity. "I can give you the gun. I can give you the palm pilot and the face-plate but I want full immunity."

When Detective Paynter left the interview room for a short time, Light-Roth used a pen to remove his leg shackles and handcuffs. Another detective observed what Light-Roth was doing and called for assistance. Light-Roth climbed into the ceiling crawl space. The ceiling collapsed and he fell to the floor in the next room. When the officers entered the room, Light-Roth said they were going to have to shoot him. After

[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

the use of pepper spray and a further struggle, the officers were able to restrain Light-Roth.

The State charged Light-Roth with murder in the second degree while armed with a firearm and charged Highley as a co-defendant with rendering criminal assistance in the first degree. The State later amended the information to also charge Light-Roth with unlawful possession of a firearm.

At Highley's bail hearing, the State argued against his release, but the court granted him a conditional release. After the hearing, Highley's attorney, Jessica Riley, contacted the prosecutor, Nelson Lee, to advocate for dismissal of the charges against him based on duress. The prosecutor refused to dismiss the charges against Highley. According to Ms. Riley, the prosecutor made it very clear to Highley that if he decided to testify, he "was testifying at his own peril, and that Mr. Lee was not offering him immunity or any other consideration in exchange for his testimony." Highley decided he wanted to testify. Before the interview with Light-Roth's attorney, the prosecutor "reminded Mr. Highley that he had to respond to Mr. Cain's questions truthfully, despite the fact that he may be incriminating himself." Following the interview, Ms. Riley asked the prosecutor to consider reducing the charges. The prosecutor again refused to do so.

In the fall of 2003, the trial court granted Light-Roth's motion to sever Highley's trial so Light-Roth could cross-examine Highley about the statements Highley made to the police.

Light-Roth's trial began on April 29, 2004. Stream, Highley, and others testified at trial on behalf of the State. During Highley's testimony, he was very contrite and emotional. After he finished testifying, Highley went up to Bonnett's mother and apologized. Toward the end of the State's case, on May 13, Light-Roth for the first time identified Justin VanBrackle as a defense witness. VanBrackle was an inmate who had signed a statement implicating Highley in Bonnett's murder. In the statement, VanBrackle said that he was in northeast Tacoma on the night of the murder, and he saw a white Honda Accord with its lights off race away from where Bonnett's body was located. When the police interviewed VanBrackle on May 18, he admitted that the statements were not true, and that he lied. VanBrackle told the detectives Light-Roth promised him that in exchange for his testimony, he would make sure the witnesses in VanBrackle's upcoming trial did not testify. VanBrackle said that Light-Roth showed him a photocopy of a white Honda Accord so he could accurately describe it when testifying. After obtaining a warrant, the police searched Light-Roth's cell and found photocopies of photographs of Dollie Sein's white Honda Accord.

After learning of the interview, Light Roth's attorney decided against calling VanBrackle as a witness. Instead, the prosecutor subpoenaed VanBrackle to testify on behalf of the State. Mr. Lee told VanBrackle and his attorney that the State would not offer any consideration in exchange for testifying. At the conclusion of the trial, on June 1, the jury found Light-Roth guilty of murder in the second degree while armed with a firearm and unlawful possession of a firearm. The court imposed a higher end standard

range sentence of 275 months and the mandatory 60 month firearm enhancement, for a total of 335 months.

Some weeks after the conclusion of the trial, Ms. Riley approached the prosecutor to consider reducing the charges against Highley. Riley argued that Highley's duress claim was supported by his testimony at Light-Roth's trial and also stressed his remorse.

The State decided to offer Highley the opportunity to plead guilty to a gross misdemeanor, attempted rendering criminal assistance in the first degree, and to recommend a suspended sentence. According to the prosecutor, the State made this decision because of "the facts of his case, the interests of justice, and the overwhelming evidence that he was acting under extreme duress when he helped Kevin Light-Roth." At sentencing on July 26, 2004, over the State's objection, the court imposed a deferred instead of a suspended sentence with a 24 month probationary period.

On July 22, 2004, VanBrackle pleaded guilty as charged to robbery in the first degree, burglary in the first degree, and unlawful possession of a firearm in the first degree; and, in a separate case, robbery in the first degree. The prosecutor recommended the top end of the sentencing range. But against the State's recommendation, the court imposed a sentence at the low end of the sentence range.

On September 20, 2004, Light-Roth filed a motion to vacate the judgment and sentence and asked the court to grant a new trial based on the plea and the sentence that Highley and VanBrackle each received. Even though the State and Highley and

VanBrackle each denied there was any agreement in exchange for testimony, Light-Roth claimed the post-trial plea indicated there were undisclosed agreements.

In support of his motion for a new trial, Light-Roth submitted the plea and sentencing documents in support of the motion. In opposition, the State submitted declarations from Highley's attorney, VanBrackle's attorney, the prosecutors in Light-Roth's case, and the prosecutor in VanBrackle's case. The court entered detailed findings and conclusions denying Light-Roth's motion for a new trial. The court concluded that Light-Roth failed to show the existence of an agreement and that neither Highley nor VanBrackle "received any benefit for his cooperation and testimony in Mr. Light-Roth's case." Light-Roth appeals the trial court's denial of his motion for a new trial.

ANALYSIS

On appeal, Light-Roth contends the State violated the requirements of Brady by failing to disclose that Highley and VanBrackle had an expectation of leniency on their pending charges. Light-Roth also asserts that he is entitled to a new trial under Napue v. Illinois, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959), because the State knowingly elicited misleading testimony from Highley. In the alternative, Light-Roth contends the trial court erred in not conducting an evidentiary hearing on his motion for a new trial. He also argues that the admission of Stream's out-of-court statements violated his right to confrontation and that in closing argument the prosecutor impermissibly vouched for Highley and Stream. In addition, Light-Roth challenges the trial court's decision to submit the firearm enhancement to the jury, the trial court's

determination that his convictions were not the same criminal conduct, and the court's calculation of his offender score.

Brady Violation

Light-Roth claims the State has an obligation under Brady to disclose a witness's expectation of upcoming opportunities for leniency in pending charges. Under Brady, the State has a constitutional obligation to disclose to the defense knowledge of material exculpatory or impeachment evidence. Brady, 73 U.S. at 87; See also Kyles v. Whitley, 514 U.S. 419, 433, 131 L.Ed.2d 490, 115 S. Ct. 1555 (1995). Impeachment evidence includes promises the State makes to a witness. Giglio v. United States, 405 U.S. 150, 154-55, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972). Evidence is material if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the trial would have been different. United States v. Bagley, 473 U.S. 667, 678, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985). Suppression of material evidence under Brady is a violation of a defendant's due process rights. In re Personal Restraint of Sherwood, 118 Wn. App. 267, 270, 76 P.3d 269 (2003).

At the beginning of Highley's direct examination, the prosecutor asked him about his pending criminal charges and whether the State made any promises of leniency.

> Q: Before we proceed any further, let me ask you, you are currently--you have been currently charged with rendering criminal assistance in the first degree, is that correct?
> A: That's correct.
> . . . .
> Q: [A]re you aware that the charge that you have facing you is a felony, correct?
> A: [Y]es.
> . . . .

Q: And just so we are clear, has the prosecutor, anyone in the prosecutor's office, myself, Mr. Colasurdo or anyone offered you anything either in writing or orally, anything at all, for your participation and your testimony today?
A: No, not at all.
Q: So you are aware, you are on your own and you are under no obligation, we have not offered or promised you anything to testify; is that correct?
A: That's correct.

And during cross-examination, Light-Roth's attorney also asked Highley about the effect of his testimony on the pending charges.[2]

The State also asked VanBrackle about his pending criminal charges and whether the State made any promises in exchange for leniency.

Q: Now, you are currently pending trial on a number of charges; is that correct?
A. Yes, sir.
Q. For example, under one cause number in King County, of unlawful possession of a firearm in the first degree?
A. Yes, sir.
Q. Robbery in the first degree?
A. Yes, Sir.
Q. And burglary in the first degree; is that correct?
A: Yes, sir.
Q: And then, under another King County cause number, you have another matter pending trial, which is, again, I believe, one count of robbery in the first degree; is that correct?
A: Yes.
...
Q: For your appearance today and testimony today, you were subpoenaed, is that correct?

[2] Q: Now, you were given no promises regarding your testimony; is that correct?
A: Yes, that's correct.
Q: And, in fact, the prosecutor could change charges against you, at his discretion, isn't that true?
A: Yes.
Q: You have no guarantee that you couldn't be charged with a more serious crime?
A: Right.

A: Yes, sir.
Q: Are you getting any consideration from the prosecutor's office at all?
A: No, sir.
Q: Have you even asked for any consideration from the prosecutor's office?
A: No, sir.

Based on the plea agreements entered into with Highley and VanBrackle after trial, Light-Roth asserted in the motion for a new trial that there were undisclosed agreements. Light-Roth does not challenge the trial court's findings that establish there was no express or implied agreement with either Highley or VanBrackle in exchange for their trial testimony. Light-Roth also does not challenge the trial court's finding that VanBrackle pleaded guilty as charged to his pending charges, and the prosecutor recommended a higher-end standard range sentence. And there is no dispute Light-Roth knew about the pending charges against Highley and VanBrackle.

Light-Roth argues that even if there is no evidence of an explicit or implicit agreement, the State must disclose a witness's expectation of leniency or potential benefits. In support, Light-Roth relies on the later plea agreements and sentence imposed for Highley and VanBrackle and a number of cases holding that when the State confers benefits on a witness, or promises the witness benefits for testifying, the State must disclose that information under Brady. A defendant can demonstrate a Brady violation by showing that the witness has either an express or implied agreement with the State, or that the State has provided benefits in exchange for testimony.

In all the cases Light-Roth cites to support his argument, the court found there was either an express or implicit agreement, or the State conferred benefits on the

witness prior to testifying. United States v. Sipe, 388 F.3d 471, 488 (5th Cir. 2004) (illegal alien witnesses were given social security cards, witness fees, trip permits to Mexico, travel expenses, phone expenses, and other benefits); United States v. Soto-Beniquez, 356 F.3d 1, 40 (1st Cir. 2003) (prosecution witnesses received oral assurances of leniency in exchange for their testimony); United States v. Boyd, 55 F.3d 239, 246 (7th Cir. 1996) and United States v. Williams, 81 F.3d 1434, 1438 (7th Cir. 1996) (government witnesses received sexual favors, free phone calls, and illegal drugs with the knowledge of the U.S. Attorney's office); Reutter v. Solem, 888 F.2d 578, 581 (8th Cir. 1989) (the Court found the government knew but did not disclose that its main witness had applied for a commutation hearing and the hearing was twice rescheduled to occur after the witness testified at defendant's trial); and United States v. Shaffer, 789 F.2d 682, 689 (9th Cir. 1986) (a government witness retained substantial assets that were likely forfeitable).[3]

Here, there was no explicit or implicit agreement with Highley or VanBrackle in exchange for their testimony at trial. And, there was no evidence that the State provided benefits to either Highley or VanBrackle before testifying. To the contrary, the record shows that the prosecutor expressly and unequivocally told Highley and his

[3] The other cases Light-Roth cites in his reply brief are also inapposite. Jiminez v. State, 112 Nev. 610, 918 P.2d 687, 698 (1996) (prosecutor made a deal with the prosecution's witness that charges against him would be dropped as a result of his cooperation with the state); Patillo v. State, 258 Ga. 255, 260, 368 S.E.2d 493 (1988) (two district attorneys told a witness that if he testified, they would tell the judge who revoked the witness's probation that he gave favorable testimony); People v. Cwikla, 46 N.Y.2d 434, 441, 386 N.E.2d 1070, 1073 (1979) (district attorney told a government witness he would write the witness's parole board in exchange for his testimony at trial); and United States v. Norlega, 117 F.3d 1206, 1218 (11th Cir. 1997) (the government gave a third party a deal that likely induced a government witness to testify).

attorney that the State would not discuss or reduce the charges in exchange for testifying. The unchallenged findings establish that the State's later decision to offer Highley the opportunity to plead guilty to a lesser charge was based on Highley's remorse and a reevaluation of the strength of Highley's duress defense after he testified. And as to VanBrackle, the record shows that he did not receive any reduction in the pending charges in exchange for his testimony. VanBrackle pleaded guilty as charged on all counts and the State recommended a high-end sentence.

We reject Light-Roth's argument that the State has an obligation under Brady to disclose a witness's unilateral expectation of leniency. A witness's "general and hopeful expectation of leniency is not enough to create an agreement or an understanding that they would, in fact, receive leniency in exchange for their testimony." Collier v. Davis, 301 F.3d 843, 849 (7th Cir. 2002), cert. denied, 537 U.S. 1208, 154 L.E.2d 1054, 123 S. Ct. 1290 (2003). See also, Wisehart v. Davis, 408 F.3d 321 (7th Cir. 2005); Todd v. Schomig, 283 F.3d 842, 849 (7th Cir. 2002), cert. denied, 537 U.S. 846, 123 S. Ct. 184, 154 L. Ed. 2d 72 (2002); (in the absence of any evidence of an agreement, a witness's alleged unilateral expectation of leniency will not support a Brady violation); Shabazz v. Artuz, 336 F.3d 154, 165 (2nd Cir. 2003); ("that a prosecutor afforded favorable treatment to a government witness [post-trial], standing alone, does not establish the existence of an underlying promise of leniency"); Hill v. Johnson, 210 F.3d 481 (5th Cir. 2000) (a witness's "nebulous expectation of help from the [S]tate" is not Brady material); Mastrian v. McManus, 554 F.2d 813 (8th Cir. 1977) (deciding not to read Giglio to support the claim "that a crucial witness's expectation of leniency must be revealed

absent evidence of an express or implied premise.") In the face of no explicit or implicit agreement or promise that either Highley or VanBrackle would receive a benefit in exchange for testifying, the fact that Highley was offered the opportunity to plead guilty to a lesser charge standing alone does not establish that the State promised leniency in exchange for testifying.

Napue v. Illinois

In a separate but related argument, Light-Roth claims the State violated Napue v. Illinois, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959), by eliciting false and misleading testimony by asking Highley whether he understood that his testimony "can and probably will be used against you in your own proceedings." Light-Roth asserts that because Highley had asked the State to dismiss or reduce his charge, the State knew Highley probably expected leniency in exchange for his testimony.

At the beginning of Highley's testimony, the prosecutor confirmed that Highley understood his testimony could be used against him at trial.

> Q: Mr. Highley, are you aware that anything you say in court today can and probably will be used against you in your own proceeding?
> A: I do.
> Q: And you are still willing to testify?
> A: I am.

Light-Roth argues the testimony was misleading because the prosecutor knew that Highley had previously sought dismissal or reduction of the charges and had an expectation of leniency. But Light-Roth's argument ignores the State's rejection of Highley's requests for leniency before Light-Roth's trial, and the State's refusal to

dismiss or reduce the charges. When Highley testified, the prosecutor had unequivocally rejected his requests for leniency and intended to proceed to trial against Highley as charged. The prosecutor also clearly told Highley that he was testifying "at his own peril." On this record, we conclude the prosecutor did not knowingly elicit false or misleading testimony in violation of Napue.[4]

Denial of Motion for a New Trial

In the alternative, Light-Roth argues the trial court abused its discretion in denying his motion for a new trial by not conducting an evidentiary hearing under CrR 7.8. CrR 7.8(c)(2) expressly states that a trial court may deny a motion for a new trial "without a hearing if the facts alleged in the affidavits do not establish ground for relief." Below, Light-Roth alleged there were undisclosed plea agreements with Highley and VanBrackle. But based on the unrefuted declarations of the prosecutors and the attorneys for both Highley and VanBrackle, the court concluded that there were no such agreements. We conclude the facts alleged did not establish grounds for relief and the trial court did not abuse its discretion in denying the motion for a new trial without an evidentiary hearing.

Right to Confrontation

Light-Roth also argues that his Sixth Amendment right to confrontation under Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), was

[4] Relying on the declaration of VanBrackle's attorney, for the first time in oral argument, Light-Roth asserts that the State violated Napue by failing to disclose an agreement with VanBrackle for testimonial immunity. Because Light-Roth failed to raise this in his briefing, and because the State had no meaningful opportunity to respond, we decline to address this argument. State v. Johnson, 119 Wn.2d 167, 829 P.2d 1082 (1992).

violated when the court admitted Stream's out-of-court statements to Detective Lewis and his therapist.

In Crawford, the Supreme Court held that a defendant's Sixth Amendment right to confrontation is violated when the trial court admits an out-of-court statement if the statement is testimonial, the declarant does not testify at trial, and there was no prior opportunity for cross-examination. Crawford, 541 U.S. at 59. But "when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements. . . . [and] does not bar admission of a statement so long as the declarant is present at trial to defend or explain it." Crawford, 541 U.S. at 59. See also State v. Price, 158 Wn.2d 630, 650, 146 P.3d 1183 (2006) (if a declarant is present and testifies at trial; there is no Confrontation Clause violation). Here, because Stream testified and was subject to cross-examination, Light-Roth's right to confrontation was not violated.

Improper Vouching

For the first time on appeal, Light-Roth argues that the State's remarks in closing argument constituted impermissible vouching. Below, Light-Roth did not object to any of the remarks he challenges on appeal. Failure to object waives error "unless the remark is deemed to be so flagrant and ill-intentioned that it evinces an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury." State v. Gentry, 125 Wn.2d 570, 596, 888 P.2d 1105 (1995).

It is misconduct for an attorney to express a personal opinion about the credibility of the witness or the guilt of the defendant. State v. Price, 126 Wn. App. 617, 653, 109

P.3d 27, review denied, 155 Wn.2d 1018, 124 P.3d 659 (2005). Improper vouching only occurs if it is "clear and unmistakable that counsel is not arguing an inference from the evidence, but is expressing a personal opinion." Price, 126 Wn. App. at 653.

Here, the prosecutor did not express a personal opinion about the credibility of Highley and Stream. The prosecutor argued that based on the evidence, Highley and Stream were credible, and Light-Roth was not.[5]

Sentencing Claims

Light-Roth raises a number of issues related to sentencing. First, he argues that the trial court lacked the authority to impose a firearm enhancement. In State v. Nguyen, 134 Wn. App. 863, 871, 142 P.3d 117 (2006), and State v. Fleming, 136 Wn. App. 678, 150 P.3d 607 (2007), this court recently rejected the same argument Light-Roth makes, holding that the deadly weapon enhancement statute also authorizes firearm enhancements.

Light-Roth also contends that his conviction for murder second degree and unlawful possession of a firearm should count as the same criminal conduct under RCW 9.94A.589. Multiple current offenses are counted as one offense in determining the offender score only if they encompass the same criminal conduct. RCW 9.94A.589(1)(a). To constitute the same criminal conduct for purposes of determining an offender score at sentencing, two or more criminal offenses must involve the same

[5] Light-Roth also challenges a remark the prosecutor made in opening statement asking the jury to find Highley and Stream credible. But Light-Roth does not explain how this statement constitutes a personal opinion of a witness's veracity. This court will not consider an assignment of error that is unsupported by argument or citation of authority. See RAP 10.3(a)(5); State v. Farmer, 116 Wn.2d 414, 433, 805 P.2d 200 (1991).

objective criminal intent, the same victim, and occur the same time and place. RCW 9.94A.589(1)(a). The trial court's unchallenged calculation of Light-Roth's offender score constitutes a determination that the two offenses did not encompass the same criminal conduct. State v. Anderson, 92 Wn. App. 54, 62, 960 P.2d 975 (1998). The trial court's determination of whether offenses encompass the same criminal conduct is reviewed for an abuse of discretion or misapplication of law. State v. Haddock, 141 Wn.2d 103, 110, 3 P.3d 733 (2000).

Light-Roth admits Bonnett was the victim of the murder and the public was the victim of the unlawful possession of a firearm, but claims that because Bonnett is a member of the public, the two crimes involve the same victim. The Washington Supreme Court rejected Light-Roth's argument in Haddock, 141 Wn.2d at 111. In Haddock, the Court held that convictions for unlawful possession of a firearm and unlawful possession of stolen firearms were not the same criminal conduct. "In our view, the victim of the offense of unlawful possession of a firearm is the general public...." "On the other hand, we are satisfied that the victims of the six counts of possession of stolen firearms and the one count of possession of stolen property were the owners of the firearms and property...." Haddock, 141 Wn.2d at 110-11. As in Haddock, because Bonnett was the victim of the murder in the second degree, and the general public was the victim of the unlawful possession offense, the court did not err in counting the two convictions as two separate points in calculating Light-Roth's offender score.

No. 54509-4-I/22

Light-Roth also argues his Sixth Amendment right to a jury trial was violated when the court, and not a jury, added a point to his offender score because he was on community placement when the crimes occurred. The Washington Supreme Court rejected this argument in State v. Jones, 159 Wn.2d 231, 234, 149 P.3d 636 (2006), holding, "because community custody is directly related to and follows from the fact of a prior conviction ...such a determination is correctly made by the sentencing judge." We conclude the trial court properly added one point to Light-Roth's offender score because he was on community placement when the crimes were committed.

Last, Light-Roth argues that this court should adopt the holding from United States v. Tighe, 266 F.3d 1187 (9th Cir. 2001), that after Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), and Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), it is impermissible to count prior juvenile criminal history in the offender score. The Washington Supreme court rejected Light-Roth's argument in State v. Weber, 159 Wn.2d 252, 149 P.3d 646 (2006), cert. denied, 2007 U.S. LEXIS 7828, 127 S. Ct. 2986, 168 L. Ed. 2d 714 (2007).

We affirm Light-Roth's convictions and the judgment and sentence.

Schindler, ACJ

WE CONCUR:

Dwyer, J.

Appelwick, C.J.

IN THE SUPERIOR COURT OF KING COUNTY

IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,)

Plaintiff,)

vs.) No. 03-C-00392-8 KNT

KEVIN W. LIGHT-ROTH,)

Defendant.) COA No. 54509-4-I

COPY

VERBATIM REPORT OF PROCEEDINGS

BEFORE THE HONORABLE BRIAN GAIN

JUDGE OF THE SUPERIOR COURT

July 2, 2004

Regional Justice Center

Kent, Washington

DISK Enclosed

Ed Howard

Court Reporter

A P P E A R A N C E S

FOR THE PLAINTIFF: Nelson Lee

FOR THE DEFENDANT: John Cain

* * * * *

ATTENTION READER: Please note that a computer disk in WORD PERFECT, AMICUS, or ASCII (formatted or unformatted), can be ordered from this court reporter and/or a complete, computerized word concordance of this transcript or a compressed copy of the transcript at a nominal fee. If interested, please call this court reporter at (206) 205-2594.

* * * * *

PROCEEDINGS

Unless specifically spelled out, names and places are spelled phonetically.

* * * * *

THE COURT: Please be seated.

MR. LEE: Good morning, your Honor.

THE COURT: Good morning.

MR. LEE: This is the matter of state of Washington versus Kevin Light-Roth. This is Kent Cause No. 03-C-00392-8.

Nelson Lee and Andy Colasurdo on behalf of the state of Washington.

Mr. John Cain is appearing on behalf of the Defendant, who is present and in custody.

Your Honor, we appear before you this morning for sentencing after the jury convicted the Defendant on June 1st of 2004 of Count 2 of the information, murder in the second degree, and Count 3 of the information, unlawful possession of a firearm in the first degree.

The jury also found beyond a reasonable doubt that with respect to Count 2, murder in the second degree, that the Defendant was armed with a firearm at the time.

On Count 2 the Defendant's offender score is 5; the seriousness level is 14. Including the 60-month firearm enhancement his total standard range of confinement is 235 months to 335 months with a maximum term of life in prison and/or a $50,000 fine.

With respect to Count 3, the Defendant's offender

score is 4; the seriousness level is 7. His total standard range is 36 to 48 months of confinement with a maximum term of ten years and/or a $20,000 fine.

At this time the State respectfully requests that the Court impose the maximum sentence on both counts with the terms to run concurrently.

In seeking the maximum of 335 months confinement, I think it's important for the Court to understand how this case substantially differs from your typical, if you can you call it that, murder in the second degree.

Here we have a Defendant who basically in cold blood murdered an acquaintance, or perhaps even a friend of his, for really no good reason at all, if ever you could have a good reason for taking the life of another human being.

After doing so, he demonstrated a complete disregard not only for human life but also just a considerable amount of contempt by the manner in which he disposed of Tython Bonnett's body and how he conducted himself in the six to seven days following the murder.

There is absolutely nothing redeeming about this man. There is nothing redeeming whatsoever about the way he conducted himself back in February of 2003. There is nothing redeeming about the way he conducted

himself after the police learned that he was the murderer and attempted to apprehend him. There was certainly nothing redeeming about the way he conducted himself during this trial.

Beginning first with essentially testimony full of lies during the pre-trial hearing, followed by his attempt to defraud this Court by soliciting perjured testimony from a fellow inmate at the King County jail here at the Regional Justice Center in Kent.

Not only, in fact, did he ask that fellow inmate to perjure himself so as to help the Defendant, but he offered, after securing that perjured testimony, to eliminate and in no uncertain terms to kill the witnesses in that other inmate's own cases that he was facing for trial.

It's unfortunate, I guess, in light of the Blakely decision that this Court and the State are bound to seek a sentence within the standard range, because frankly I think the only way that the community can be protected from the Defendant who has a history of terrorizing the communities in which he has lived is to lock him up for as long a period of time as possible.

And that is why we are asking for 335 months on the murder in the second degree charge and the 48

months with respect to the unlawful possession of a firearm.

I think it should not be lost on anyone here in the courtroom today that after being released from prison on his robbery conviction back in July of 2003, it took less than a year before he was out and about committing burglary, stealing firearms, carrying firearms, and ultimately culminating in the murder of Tython Bonnett in February of 2003.

This man certainly has not learned from his exposure to the criminal justice system and to law enforcement, and he has certainly not learned anything from his time of incarceration while being incarcerated on the robbery charge.

Before the Court imposes sentence, I would like to inform the Court that Alexis Stream is present and that she has a letter from Twila Bonnett, the victim's mother, and would like to address the Court before the Court imposes sentence.

MS. STREAM: Alexis Stream.

I have been shot in the chest with a bullet from a gun held by the hand of Kevin W. Light-Roth. My bleedings and excruciating pain is deep and endless by second, by minute, by hour, by day. I awake every morning to suffer the same. There is no medical help,

no counseling, no pain killers to numb or lessen the bullet that has been lodged in my heart, much less the very bowels of my being.

Life has lost its flavor; color has become dull. The will to continue living has turned into a cancerous will to stop living. I lay my head on my pillow every night and close my eyes. I pray that I will stop breathing; I pray to just die.

I am now half a person, half a woman, half a mother. My only son, Tython Kolby Bonnett, born August 3, 1983, has been murdered.

There is no amount of prison sentence that will ease the pain, the pain that has now become an ugly hideous growth that I must shoulder for the rest of my days on this earth.

I do pray one day that he, Kevin, will come to repentance in your soul for needlessly taking the life of another human being.

My son, Tython, wanted to live. He loved life and was so excited about living. His energy was endless as is my love for him. He was a small town boy who was fearless. He was always eager to try something new and was not afraid of anyone. In school he played football and soccer and wrestling. He was on the swim team; he played golf. During the summer

he water skied and skate boarded.

Most of all he liked to skateboard, listen to music, snow boarding outside with his friends. He liked to play the guitar for people he loved. He liked animals -- he ate watermelon.

His favorite color was dark purple, blue, and black. He liked to follow the other children. He would play computer games for endless hours.

He grew up without a father. His father committed suicide when he was 6. Tython will not have a chance to grow up, fall in love or get married or to bear children.

I could talk for hours about the love I have for my son. I just let the state of Washington representatives to know from me, thank you, Federal Way Police Department, and especially Russ Ginghart. Thank you for the jurors who had to listen to testimony given in the murder trial of my son.

Thank you. Sincerely, Twila B. Bonnett.

MR. LEE: Your Honor, I believe that is the witnesses who wish to address the Court.

In addition to the confinement period, the State is also asking that the Court impose, or order restitution, that the Defendant also pay all court costs and the victim penalty assessment, that

following his incarceration he is to serve community custody for a period of 24 to 48 months, during which time he is to follow all of the recommendations and conditions of the Department of Corrections, that he have no contact for life with the following individuals:

Chris Highley, Curtis Stream, Danle Sein, Terry Kolbet, Jesse Kolbet, Daniel Kolbet, Stacy Hanft, Amanda Reihm, Brett DeMartino, Brian Edgell, Jennifer Daft, Pam Marks, Shelby Manning, Colleen Concannon, and finally Alexis Stream.

And that concludes the State's recommendation.

THE COURT: Did you indicate there are other individuals who wish to speak?

MR. LEE: There are not, your Honor.

THE COURT: Mr. Cain, any dispute as to the scoring?

MR. CAIN: No, not to the scoring.

THE COURT: Any recommendations from the Defense?

MR. CAIN: Your Honor, I would ask that you impose the sentence in the mid or low range.

Actually, the Defendant's mother is present. He is 21 years of age, and there are some fine qualities that has in terms of intellect, that he has shown some

loyalty to friends. His mother would make the statement that when he has committed a wrong, he has always admitted it. He has attention deficit disorder that has plagued him throughout his life.

The Court heard the testimony in this case. I'm not going to elaborate on it. It does seem that many of the people who testified in this case showed, stretching the truth.

My client is the one that was found guilty, and he is bearing responsibility, but I think that there were many people who acted wrongly in this case.

Certainly, the State relied upon Mr. VanBrackle, who was not given a deal, *Mr. Milam, who was not given a deal, but I think this was a case that I cannot say that Mr. Bonnett was dumped on the road by my client. He was found guilty, and he did run from the police.

So, this is a very tragic case, but it was not charged as a first degree murder; it was charged as a second degree murder. There was no premeditation alleged as an element of this case. He is going to have flat time of 60 months.

So, I think a sentence that puts him into the mid-20 years for incarceration is not unreasonable. I know the Defendant wants to address the Court.

If the Court would hear from his mother, she would address the Court.

THE COURT: Sure.

Why don't you come up here in between the tables and please state your name for the court reporter.

MS. LIGHT: Noreen Light.

First, I would just like to address the comments about the reaction to the police. I think that the negative reaction may be in part to the negative interaction between Kevin and his stepfather who is a Seattle police detective, and I think that is part of his fear of interacting with the police, initially.

I was a single parent for most of Kevin's early years, and because my work was in public safety, I have worked as a 911 dispatcher for most of my life. I worked shift work, nights, weekends, Christmas, everything, and so my parents were a big part of Kevin's life.

They stepped up to help take care of him when I was gone, and I submitted a letter that my mother wrote to you. I hope that you will take a moment to read that and to consider her input. She is 84 years old and she could not be here. Actually, Kevin asked that she not be brought to the trial because he thought it would be too difficult for her.

And she offered to come today. But, again, Kevin and I discussed it, and we really didn't think it was in her best interests to come.

There are many things I wish you could know about my son. John mentioned his intelligence. Other things that you have not had an opportunity to see in him is his kindness and the positive relationships that he has had with so many of his family members and other people that he has encountered, but I have only a few minutes to speak to you, and I did write a very short letter which has been submitted, I believe, or perhaps John has not submitted it to you yet.

MR. CAIN: I have both the letters here.

THE COURT: You can bring them up.

MS. LIGHT: In my letter I am presenting a very simple, straightforward message about Kevin. In the past he has always accepted responsibility for his actions. He has told me what he has done in these other instances, and has been very straightforward with me about that.

He has accepted the consequence of those actions without sidestepping his own responsibility and without ever placing any blame on anyone else.

If Kevin were responsible for Tython's death, I

believe he would accept that responsibility and those consequences of that act. However, Kevin has stated from the beginning to me, to the police, and in his letters to his friends and his family that he did not kill Tython Bonnett.

You have the task of assessing the case and imposing an appropriate sentence within the standard sentencing range, and what I am asking is that you consider my input in deciding that, making that decision, and to impose the lowest sentence within that range.

Thank you.

THE COURT: Mr. Cain, any others, other than the Defendant who wishes to speak?

MR. CAIN: I don't have anyone else who wishes to speak.

I did forget to address the issue of the no contact order that the State had requested. I appreciate that Mr. Highley, and I assume Mr. Stream, do not want to have contact.

I don't know if the other individuals have stated concern or have asked that a no contact order be entered. So I am sort of in the dark in that. I know that there was some friendship between the Kolbets and my client, and I know that Shelby Manning, at least at

one point in time they were friends. So I don't know if they want to have the restraining order imposed or not.

Actually, my preference would be that the Court not impose a restraining order unless we have some word from, for lack of a better phrase would be, the more peripheral witnesses in this case.

THE COURT: Let me read the letters first.

Mr. Light-Roth, is there anything you would like to add on your own behalf?

THE DEFENDANT: Yes, your Honor. Just a couple of things.

I have listened to Mr. Lee for the last however long to talk about how callous and unfeeling I am. He doesn't know me. He has never sat down and talked to me. He has never even met me. He doesn't know anything about me.

I am not callous, and I am not unfeeling, and I wish with all my heart there was something I could do now or then that would have prevented, saved Tython Bonnett from dying. And I know there is nothing I can say about that. There is nothing I can say about that that is going to make it any better for anybody; so I won't do that.

I want to reiterate, I didn't kill Tython Bonnett, and that's the truth, and I intend to appeal.

Thank you.

THE COURT: Well, I just wanted to make a couple of comments if you are finished, Mr. Cain.

MR. CAIN: Yes, your Honor, I am finished.

THE COURT: I did in fact hear the entire trial. I am persuaded, as the jury obviously was, that what Mr. Light-Roth has just told me, that he did not kill Tython Bonnett, is not the truth.

In determining, however, what the appropriate sentence is, I also have some information that the jury did not have. I have had the opportunity to listen to Mr. Light-Roth when he testified in the pre-trial hearing. I had an opportunity to see the arrogance that the jury had described to them in the testimony, his attitude towards the procedures of the court and the law and the proceedings.

I further have, at this point, have had an opportunity to review his criminal history. Mr. Light-Roth, as has been pointed out, is a young man. He has in terms of his activities in this particular case, I saw the film and the photographs of his trying to escape from the police.

I did see in his prior record that he has an escape conviction as a juvenile. He has a robbery in the first degree with a handgun conviction for which he apparently went to the State prison system.

With this conviction Mr. Light-Roth currently has two strikes. He is going to the Department of Corrections, probably end up some place like Walla Walla where there are a lot of people who believe they are smarter and tougher than anybody else.

And if Mr. Light-Roth continues with the current attitude and conduct, and then if he makes it out of the State prison system, if he continues with the same attitudes that he has demonstrated in his past, it will not be long before Mr. Light-Roth gets his third strike, and then there are no options.

At this point I am going to follow the State's recommendation. I am satisfied that Mr. Light-Roth demonstrates classic sociopathic behavior, didn't care about anybody but himself, and I am satisfied he is dangerous. I am satisfied, as I pointed out, if he makes it out of prison and does not somehow change his life, then he is going to get his third strike, or try to escape and be killed by the police or run into somebody who is tougher than him who will take his life.

It is a shame that Mr. Light-Roth at such a young age is basically wasting his life. But at this point I am satisfied, having listened to the trial, and listened to the pre-trial, looking at the record, that Mr. Light-Roth's return to society, if he makes it out, as I pointed out, needs to be delayed as long as possible because, again, unless he changes dramatically in prison he is going to be back out, hurt somebody, and be back in for the rest of his life.

My job at this point is to ensure that he does not do that for as long as possible. So I am going to follow the recommendation, impose 335 months, 45 months on the other charge; they will run concurrent. Community custody is required for 24 to 48 months.

I am going to impose restitution and the victim penalty assessment. Although I have toured prisons such as Walla Walla and know there is some opportunity to be employed and to earn some resources, I am satisfied that the restitution and victim penalty assessment are the best I can anticipate at this point. The funeral costs, et cetera, are going to be part of the restitution. So I will waive other non-mandatoroy financial obligations.

Mr. Cain, I am going to impose a no contact

order. If those individuals do not wish to participate, then they can appear and I will consider relieving Mr. Light-Roth of the prohibition. But at this point I am going to impose it. And it will be up to those individuals to come and ask that it not be imposed.

And the reason for that is I think this case has demonstrated in Mr. Light-Roth's situation a disregard for human life, and the testimony of an individual who was apparently solicited to perjure themselves. And there was at least implied threats to the health of other individuals. So I'm satisfied that they need to come and tell me that they are not afraid and their reasons. That will be the order.

Mr. Cain.

MR. CAIN: Your Honor, might I ask in at that portion of the order where the Court orders the restraining order that it be included into the order that the Court may reconsider that upon request of the parties? There might be a time line problem if that language is not put into the order.

THE COURT: I have no problem with that.

MR. CAIN: Thank you.

THE COURT: With regard to the no

contact order, it will impose no contact, also, to the family of Tython Bonnett, and the language I usually put in that situation is, unless it is at their request. The reason for that is sometimes in the healing process some interaction may be helpful. But other than that, he is to have no contact with Tython's mother or any other relative.

Any other questions by way of clarification, Mr. Cain?

MR. CAIN: No, your Honor.

THE COURT: Mr. Lee, any questions?

MR. LEE: Just of Counsel, if his client waives his presence at a future restitution hearing?

MR. CAIN: Yes, your Honor.

You will waive presence?

THE DEFENDANT: Yes.

MR. CAIN: He will waive his presence at the restitution hearing.

THE COURT: Mr. Light-Roth, that doesn't mean you can't be here. It means you are not required to be here. If you are still in the State prison system, they don't necessarily have to bring you back. You can still have Mr. Cain request you be here if you wish; you are not required to be here.

Anything further, Mr. Cain?

MR. CAIN: Not for the sentencing. We had a couple of motions that were going to be before the Court.

THE COURT: Are you referring to findings and conclusions?

MR. CAIN: Yes.

MR. LEE: Your Honor, with respect to the 3.5 findings, Mr. Cain has indicated some changes he wants made, and I will make those. If I can also request a hearing date just to be set as a precaution approximately three weeks from today's date to accommodate counsel's schedule, and I will also present 404(b) findings.

If we can resolve the matters, then we can strike the hearing. If not, just so we have a hearing in place.

THE COURT: That would be appropriate. So let's set the hearing date, Mr. Cain and Mr. Lee.

Does the 22nd work, at 8:30, 22nd of July?

MR. CAIN: What day of the week is that?

THE COURT: That's a Thursday.

MR. CAIN: I am leaving for a period of

time.

THE COURT: We can do it any time that week except Friday.

MR. CAIN: Thursday the 22nd?

THE COURT: Yes.

MR. CAIN: That would be fine.

THE COURT: At 8:30 unless you are in agreement and have signed off.

MR. CAIN: All right. Your Honor, I had --

THE COURT: Go ahead. I'm listening.

MR. CAIN: I had submitted previously a declaration of indigency and motion for the appeal purpose.

THE COURT: I will sign it.

MR. CAIN: I'm a little bit embarrassed, but I was unable to bring the order. I told Mr. Lee that. He advised me that I think I can come back this afternoon if the Court is in session and I can present it.

THE COURT: I will sign the order of indigency so you can file the notice.

MR. CAIN: Thank you, your Honor.

I am looking for the paragraph that would tell me credit for time served.

I provided to my client the notice of rights on appeal. He signed that order.

THE COURT: Because this was a trial, I still need to go through it with Mr. Light-Roth.

MR. CAIN: Okay. And also he signed off on the notice that he cannot possess a firearm.

THE COURT: I am signing the notice of ineligibility to possess a firearm. I reviewed the judgment and sentence; it does appear to comport with my oral order, and I have signed it along with Appendix H, Appendix B, and Appendix G.

Mr. Light-Roth has provided his fingerprints in open court, and I have signed the fingerprint form. I am also signing the notice of rights.

Mr. Light-Roth, you have indicated you wish to appeal, but I need to make sure that you understand your rights. You have the right to appeal in this case. You also have a right to appeal if the sentence is outside the standard sentence range. This case is not outside that range.

You have to file a notice of appeal within 30 days or you waive your right to appeal. The original and one copy of the notice must be filed with and filing fee paid to the clerk of the superior court within 30 days after the entry of the judgment, which

is today.

I will sign the paperwork when prepared by Mr. Cain for you to proceed with what is known as in forma pauperis, which means you do not have the resources to pay those costs.

If you for some reason do not have Mr. Cain file the notice, the superior court clerk will provide you a notice of appeal and file it as soon as you have completed it.

You also have the right to have counsel appointed and portions of the trial record necessary for review transcribed at public expense on appeal. You also have, and it is on the back of this form, certain rights which are known as rights on collateral attack, and those rights are basically limited to one year.

You will have a copy of this so if you have any questions you can ask Mr. Cain, or if you need assistance from the superior court clerk's office, you can get that.

I have signed the notice of rights.

Anything further, Counsel?

MR. LEE: Your Honor, I actually need to make one amendment to the judgment and sentence. On Page 4 it reads 335 months for Count 2. I need to, in reading the language of the form, to subtract the

60 months and add the 60 months.

THE COURT: The total is 335, 60 of which is the enhancement.

MR. CAIN: No objection. And I will provide my client in open court his copy of the notice of rights.

THE COURT: We will be in recess.

(PROCEEDINGS CONCLUDED)

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF)

I, N. Edward Howard, official court reporter for the State of Washington in and for the county of King, do hereby certify that I was acting in that official capacity on July 2, 2004, during the proceedings in the matter of STATE OF WASHINGTON v. KEVIN W. LIGHT-ROTH, Cause No. 03-C-00392-8 KNT.

I further certify that the foregoing transcript, consisting of 25 pages, is a true and accurate transcript, and that these proceedings were reported by me in machine/computer stenotype and thereafter reduced to print by me or under my direction.

I further certify that I am not related to any of the parties to this action, nor am I interested in the outcome thereof.

WITNESS MY HAND on this 8th day of October, 2004, in the City of Kent, County of King, State of Washington.

N. EDWARD HOWARD
OFFICIAL COURT REPORTER
REGIONAL JUSTICE CENTER
ROOM 2D
KENT, WASHINGTON 98104

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Jeffrey Ellis, the attorney for the petitioner, at jeffreyerwinellis@gmail.com, containing a copy of the Motion for Discretionary Review in In Re Personal Restraint of Kevin W Light-Roth, Court of Appeals, Division 1, No. 75129-8-I, in the Supreme Court, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 6th day of September, 2017.

L Brame

Name:
Done in Seattle, Washington

KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

September 06, 2017 - 2:38 PM

Filing Motion for Discretionary Review of Court of Appeals

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Trial Court Case Title:	

The following documents have been uploaded:

- DCA_Motion_20170906143709SC421569_5502.pdf
  This File Contains:
  Motion 1 - Accelerate Review
  The Original File Name was 75129-8 - Motion for Accelerated Review.pdf
- DCA_Motion_Discretionary_Rvw_of_COA_20170906143709SC421569_1092.pdf
  This File Contains:
  Motion for Discretionary Review of Court of Appeals
  The Original File Name was 75129-8 - Motion for Discretionary Review.pdf

A copy of the uploaded files will be sent to:

- ellis_jeff@hotmail.com
- jeffreyerwinellis@gmail.com
- paoappellateunitmail@kingcounty.gov

Comments:

Sender Name: Wynne Brame - Email: wynne.brame@kingcounty.gov
Filing on Behalf of: Ann Marie Summers - Email: ann.summers@kingcounty.gov (Alternate Email:)

Address:
King County Prosecutor's Office - Appellate Unit
W554 King County Courthouse, 516 Third Avenue
Seattle, WA, 98104
Phone: (206) 477-9497

Note: The Filing Id is 20170906143709SC421569